

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



**76-1562**

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA

Appellee

-against-

Docket No. 76-1562

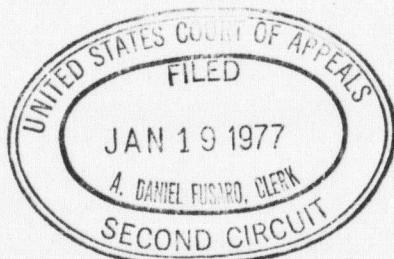
PRASARN BHONGSUPATANA

Appellant

-----X

**APPENDIX**

JOHN C. CORBETT  
Attorney for Appellant  
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66 Court Street  
Brooklyn, New York 11201  
Tel. 875-1975



PAGINATION AS IN ORIGINAL COPY

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JUDGE MAGISTRATE Assigned	10/12/76
DEFENDANT Name	0715
felony fm	X 207 1
Drip Sentence	

66CR 640

10/7/76	76 640 1
U.S. MAGistrate	76 M 2062
COURT DATE	

U.S. TITLE/SECTION

21:952(a)960(a)(1); Did import and possess with intent to distribute heroin, etc.

18:2

OFFENSES CHARGED

841(a)(1) & intent to distribute heroin, etc.

II. KEY DATES & INTERVALS

ARREST OR	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began High Risk Date	Information 10-7-76	10/14/76	10/26/76	10/26/76
Summons Served	Indict. Waived	X	10/26/76	X
First Appearance 10-2-76	In Chargin g District	10/28/76		

OVERHELD/COUNTS

L! Denied	AMT \$200,000.00	Defender
Set		Lawyer Recog.
U.S.A.		UNITSA
200,000.00		CONDITIONS
10% Deposit		
10/2/76		Surety Bond
X Not Made		Collateral
Status Change (See Below)		3rd Party Cust Other

MAGISTRATE					
SEARCH WARRANT	ISSUED	DATE	INITIAL/IND	INITIAL APPEARANCE DATE	OUTCOME
SEARCH WARRANT	ISSUED			PRELIMINARY EXAMINATION OH	DISMISSED
SEARCH WARRANT	RETURN			REMOVAL HEARING	
SUMMONS	ISSUED			DATE HELD	X HELD FOR GR. OR OTHER PRO- CESS IN THIS DISTRICT
SUMMONS	SERVED			DATE HELD	
ARREST WARRANT ISSUED					HELD FOR GR. OR OTHER PRO- CESSES IN DISTRICT BELOW
COMPLAINT	10-2-76	ASC/07E		WAIVED	
OFFENSE (In Complaint)				NOT WAIVED	
				NOT FILING REQUEST	

Importation of large quantities of heroin. T-21 USC Section 952(a)  
963.

U.S. Attorney or Asst.

Clayman...  
Carol Amon

ATTORNEYS  
John Cobett, Esq.  
66 Court Street  
Brooklyn, New York

\* Show last names and suffix numbers of other defendants on same indictment information

DATE	DOCUMENT NO.	PROCEDURES	EX- EMPTABLE DELAY
10/12/76		Deft. indicted on 10/7/76 - See 76 CR 640.	
10-7-76		Before CATOGGIO, J - Indictment filed	
10/14/76		Before WEINSTEIN, J. - Case called. Deft & Counsel present. Deft arraigned and enters a plea of not guilty. Pre-Trial conference held and concluded. Bail of 200,000.00 continued. Interpreter sworn. Defts motion for reduction of trial set for 10/26/76 at 9:30 a.m.	
10-26-76		Voucher of Compensation for Expert Services - Filed.	
10-26-76		Before Weinstein, J.- Case Called. Deft & Counsel Present. Trial ordered & Begun. Jurors were selected and sworn. Vinita Buivan sworn as interpreter. Trial continued to 10-27-76.	
10-27-76		Copy of Letter dated 10-21-76 received from Chambers to Mr. Cobett from Mr. Carol Amon - Filed. And Report of Investigation - Filed.	
10-27-76		Before Weinstein, J.- Case Called. Deft. & Counsel Present. Trial resumed. Deft's motion to dismiss the indictment is denied. Trial continued to 10-28-76 at 10:00 A.M.	

FORM AD-216

BEST COPY AVAILABLE

DATE	IV PROCEEDINGS (continued)	PAGE TWO	V EXCLUDABLE DELAY	
			SEARCHED	INDEXED
	(DOCUMENT NO.)			
10/28/76	Before WEINSTEIN, J.- Case called. Deft & Counsel presen. Trial resumed. Both sides rest. Defts motion for a judgment of acquittal is denied. Court charges jury. Alternate jurors discharged. Jury returns and enters a verdict of guilty on counts 1 and 2. Jury discharged. Trial concluddd. Sentence set down for 11/12/76 at 10:30 a.m.			
10/28/76	By WEINSTEIN, J. - Order of sustenance filed.			
11-11-76	By Larry F. Taylor - Letter received from M.C.C. giving a brief summary of their observation during stay. - filed.			
11-12-76	Before WEINSTEIN J - case called - deft & atty John <del>Quinn</del> Corbett present - Benita Buivan sworn as interpreter - deft sentenced to 10 years imprisonment on each of counts 1 and 2 plus speical parole term of 5 years to run conc. and fine \$10,000.00 on each of counts 1 and 2 to run conc. for a total fine of \$10,000.			
11-12-76	Judgment & commitment filed - certified copies to Marshal			
11-16-76	Certified Copy of Judgment and Commitment returned and filed from Marshal. Dft. delivered to M.C.C. on 10-4-76.			
11-17-76	Notice of Appeal filed without fee.			
11-17-76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.			
11-18-76	Voucher for expert services filed			
11-22-76	Voucher for compensation of atty John Corbett filed			

DATE	SEARCHED	INDEXED	FILED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

- against -

PPASARN BHONGSUPATRA,  
Defendant.

*Winston J*  
INDICTMENT

Cr. No. 76 Cr. 640  
(T. 21 U.S.C., § 952(a))  
and § 960(a)(1); T. 21,  
U.S.C., § 841(c)(1); T. 18,  
U.S.C., § 2)

10-7-76

----- X  
THE GRAND JURY CHARGES:

COUNT ONE

On or about the 6th day of September 1976, within the Eastern District of New York, the defendant PPASARN BHONGSUPATRA did knowingly and intentionally import into the United States from Bangkok, Thailand approximately 6.1 kilograms of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1); Title 18, United States Code, Section 2)

COUNT TWO

On or about the 1st day of October 1976, within the Eastern District of New York, the defendant PPASARN BHONGSUPATRA did knowingly and intentionally possess with intent to distribute a quantity of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(c)(1)).

A TRUE BILL.

FORTUNI

EDWARD G. FORTUNI  
United States Attorney  
Eastern District of New York

2 case.

THE COUNT: Thank you counsel. Now, this defendant has pled not guilty. The Government had the burden of proving his guilt beyond a reasonable doubt with respect to each element of the crimes he's charged with committing. This burden never shifts throughout the trial. A defendant does not have to prove his innocence, he may not submit any evidence at all. The presumption of innocence remains with the defendant throughout the trial and must be considered by you in your deliberations. A reasonable doubt means that doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his and her life. A reasonable doubt must result from the evidence submitted or their failure to produce evidence.

(Continued on next page.)

Finding a defendant guilty of committing a drug offense and subjecting him to the possibility of penalties is a serious matter and you will consider this in determining whether there is a reasonable doubt. And nevertheless if you are convinced at the end of your deliberation that the Government has proven this defendant guilty beyond a reasonable doubt you should find him guilty and not be swayed by any consideration of sympathy. In this case the defendant is charged with two counts or crimes. Each must be separately considered by you. You may find him guilty of both or not guilty of both or guilty of one and not guilty of the other. Each has to be separately considered. First count, the charge reads as follows: On or about the sixth day of September, 1976, within the Eastern District of New York the defendant did knowingly and intentionally import into the United States from Bangkok, Thailand, approximately 6.1 kilograms of heroin. The Schedule 1 narcotic drug controlled substance thereby violating Section 952 of Title 21 of the United States Code which reads as follows: It shall be unlawful to import into the United States or anyplace outside thereof any controlled substance of Schedule 1 of this chapter. It states that anyone knowingly or intentionally

1 importing or exporting -- in this case only importing --  
2 such a controlled substance shall be guilty of a  
3 crime. In order to find him guilty of the violation  
4 as charged. You must find that he did import into  
5 the United States a controlled substance. Heroin is  
6 a substance listed in Schedules as a controlled drug.  
7 If the defendant did import that drug then you have to  
8 decide whether he did so knowingly and intentionally.  
9 A person does not do an act knowingly if his behavior  
10 is the result of a mistake or negligence or any other  
11 innocent reason.

12 If you find that the defendant acted intention-  
13 ally you must find that he acted voluntarily and with  
14 the specific intent to do something the law forbids  
15 that is to say that he specifically intended for that  
16 purpose of importing heroin into this country.

17 The fact of his knowledge may be established  
18 by directed circumstantial evidence as any other fact  
19 in the case. Knowledge may be proven by the defendant's  
20 conduct as well as by his testimony on the stand since  
21 we have no way of looking directly into the person's  
22 mind.

23 Obviously the critical facts for this case is  
24 whether this defendant knew there was heroin in that  
25 pedestal. The defendant has testified that he has no

1 such knowledge. One may not willfully and intentionally  
2 remain ignorant of a fact important and material to  
3 his conduct in order to escape the consequences of  
4 the credible law.

5 If you find from all the evidence beyond a  
6 reasonable doubt that the defendant believed that he  
7 had heroin in that pedestal so that he can say, but  
8 he consciously avoiding confirming that there was  
9 heroin in it so if apprehended he could say he did not  
10 know there was heroin in that pedestal you may treat  
11 this deliberate avoidance of positive knowledge as the  
12 equivalent of knowledge. In other words you may find  
13 the defendant acted knowingly if you find either that  
14 he actually knew that the pedestal contained heroin or  
15 that he deliberately closed his eyes because he had  
16 every reason to believe it was a fact.

17 What I would like to emphasize, ladies and  
18 gentlemen, is the requisite knowledge cannot be  
19 established by testimony demonstrating either negli-  
20 gence or even foolishness on the part of the defendant.  
21 The defendant if he acted knowingly and intentionally  
22 is not excused from guilt because he himself did not  
23 cause the heroin to be sent from Thailand into the  
24 United States. That is that somebody else actually  
25 shipped it or because he was acting for another

1                   arranging to receive it in this country. Whoever  
2                   commits an offense against the United States or aids,  
3                   abides, commands, induces or cures its commission  
4                   punishable at the principal. This means if you find  
5                   the defendant was knowingly and willfully aiding and  
6                   abetting another person in the commission of a crime  
7                   in importing heroin and he did so purposely he's as  
8                   guilty as if he was solely responsible for planning  
9                   and executing the entire scheme.

10                  The second charge reads as follows: On or  
11                  about the first day of October 1976, the exact dates  
12                  aren't critical, the defendant did knowingly and  
13                  intentionally possess with intent to distribute a  
14                  quantity of heroin in violation of the laws. And the  
15                  second provision shall be unlawful for any person  
16                  knowingly or intentionally or knowingly and  
17                  intentionally to possess with intent to distribute a  
18                  controlled substance.

19                  Now, heroin as I said is a controlled substance.  
20                  There are three elements to the crime. First that  
21                  the defendant did in fact possess heroin. Now, the  
22                  word possession means not only physical possession the  
23                  way I possess these glasses, but also means dominion  
24                  and control of the drug. Such as the defendant could  
25                  move them himself or cause others to move them as his

agents. If, for example, he had the power to have  
the trucker move them or an agent move it and say  
here, you move them from here to here then he would  
be in constructive possession of those goods. This is  
constructive company possession of the furniture in  
your house even though you're not here with the  
consent of your spouse.

Of course to take the furniture and move it  
to another place. It is not necessary for the  
Government to prove that the defendant took physical  
possession from that he actually embraced it in and  
put it in his arms or pocket.

Proof of constructive possession is enough.  
Second, you must find the defendant beyond a reasonable  
doubt that he knowingly and intentionally possessed  
the heroin. He possessed it not knowing it was  
heroin and it was just by accident then it was not  
possession.

Now if you find that he distributed the heroin  
willfully the word distribute means to deliver, that  
is to transfer to another person a gift or sale or  
anything else. You give it to somebody else and then  
he has the possession of distributing. It doesn't  
make any difference if it is going to be sold or  
given away. Transferred to somebody else as a

6       1 possession. You are going to have to weigh the  
2 evidence you heard carefully. You are the sole judges  
3 of the credibility of the witnesses. The assumption  
4 that a witness will tell the truth may be dispelled  
5 by the appearance and conduct of the witness on the  
6 stand. The manner in which the witness testified.  
7 The character of the testimony. The contrary evidence  
8 if any or contradictory.

9                 Consider each witness' intelligence, his motive,  
10          his state of mind, his partnership in prosecution or  
11          defense of the case. The demeanor and manner of  
12          testifying on the witness stand. The relationship  
13          each witness bears to each side in the case. The  
14          manner in which the witness might be affected by the  
15          verdict and also the extent to which the witness is  
16          contradicted or supported by the other evidence in the  
17          case.

18                 Don't give any greater weight or credibility  
19          to a witness merely because he happens to be an  
20          employee of the Government. His testimony is to be  
21          considered the same way you would consider anybody  
22          else's testimony. The defendant was a competent  
23          witness. He voluntarily took the witness stand,  
24          although, he could not be compelled to do so. His  
25          testimony should not be disbelieved solely because he

1           is a defendant. Obviously, it should not be  
2           disbelieved solely because he's a foreigner. That  
3           should not enter into your deliberations. He should  
4           be treated exactly the way an American citizen would  
5           be treated in this Court or the way you would like to  
6           be treated in a foreign court. You may rely upon his  
7           testimony or so much of it as you believe. You may  
8           however in weighing his testimony considering the fact  
9           he has a vital interest in the outcome of this trial  
10          and you can consider his prior statement in assessing  
11          his credibility.

12           If you believe a witness has willfully sworn  
13          falsely to you you can ignore his testimony completely  
14          or accept part of it or reject part of it if you  
15          think he lied. Your recollection of the Government,  
16          if you want any of the testimony read back we will  
17          try to get it. It's still on these tapes, however,  
18          it's not typed up, but we will try to get it. You  
19          really don't need it so far because it is difficult  
20          to get it out of that machine. You want any or all  
21          of the exhibits we will send them in. I don't want  
22          to send in the narcotics for obvious reasons.

23           If you want to look at the narcotics you will  
24          have to come out. Each of you of course is entitled  
25          to your own opinion. You should consider each other's

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1           opinions carefully. Listen politely and fully to each  
2           other. Don't hesitate to change your opinion if you  
3           think somebody else is right and you're right, but  
4           in the ultimate analysis you have to make your own  
5           decision.

6           You want any further instructions on the law  
7           send in a note and I will try to be of help to you.  
8           The verdict has to be unanimous. You come in with  
9           two verdicts, guilty or not guilty on Count 1. The  
10          importation count. Guilty or not guilty on Count 2,  
11          the possession with intent to distribute.

12          Your oath sums up your duty and that is not  
13          fear or favor, that you will well and truly try the  
14          issues between the parties according to the evidence  
15          you heard and the law as I've explained it to you.

16          Does counsel want to see me at the side bar?

17          MR. CORBETT: There is no need for the defense.

18          MS. AMON: No need.

19          THE COURT: All right, swear the marshal please.

20          (The Court Clerk swears in the marshal.)

21          THE COURT: Retire in the jury room please.

22          (Whereupon the jurors leave to deliberate at  
23          1:05 p.m.)

24          THE COURT CLERK: A note from the jury marked  
25          as Court Exhibit 3.

RECEIVED  
U. S. ATTORNEY  
JAN 18 2 19 PM '77  
EAST DIST. N.Y.

*Paula*  
*Geno more*